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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/574,856	05/19/2000	William O. Burke III	2104A	1316
25280	7590	03/29/2004	EXAMINER	
MILLIKEN & COMPANY 920 MILLIKEN RD PO BOX 1926 SPARTANBURG, SC 29304			WATKINS III, WILLIAM P	
			ART UNIT	PAPER NUMBER
			1772	

DATE MAILED: 03/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/574,856

Applicant(s)

BURKE ET AL.

Examiner

William P. Watkins III

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1772

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 05 January 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-6,8-14,20-26 and 31 is/are pending in the application.
- 4a) Of the above claim(s) 10-14 and 23-26 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 6 is/are allowed.
- 6) ☒ Claim(s) 1-5,8,9,20-22 and 31 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

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**DETAILED ACTION**

1. The terminal disclaimers filed 18 February 2003, regarding U.S. 6,340,514, and 21 November 2003, regarding Serial No. 10/066,737 have been accepted. The obvious type double patenting rejections using these references are withdrawn in view of the disclaimers.

2. Claim 6 is allowed. The cited prior art in the 103 rejections given below, fails to teach a projection with a substantially thicker skin thickness than the skin around the rest of the mat, this limitation in combination with the other limitations of claim 6 define over the prior art. The double patenting rejections are withdrawn regarding claim 6, as either being moot due to abandonment of the application, or because the applications or patents cited do not teach a projection with a substantially thicker skin thickness than the skin around the rest of the mat, this limitation in combination with the other limitations of claim 6 define over the double patenting rejections.

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3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. Claims 1-3, 5, 8-9 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lindholm (U.S. 6,014,779) in view of Dunl (U.S. 4,329,981).

Lindholm teaches a rubber mat with projections on both the top and bottom surfaces, that is used to massage feet, and has top projections that are less than 1/2 inch in diameter (col. 3, lines 25-30, col. 4, lines 50-55, Figure 3). Dunl teaches making a mat with projections used to massage feet out of a foam rubber with a continuous outer skin in order to provide cushioning for the feet being massaged and seal the mat against water intrusion (col. 4, lines 15-35). The instant invention claims the use of projections about 1/32 to 1/8 inch in diameter in a foam mat with a continuous skin. It would have been obvious to one of ordinary skill in the art to have made the mat of Lindholm out of a foam with a skin in order to provide

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cushioning and protection from water because of the teachings of Dunl. Lindholm has a continuous rubber border. Variation in foam rubber composition is taken being within the ordinary skill of the art. One of ordinary skill in the art would add carpet pile if more abrasive cleaning of the feet was desired.

5. Claims 4, 20, 21 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lindholm (U.S. 6,014,779) in view of Dunl (U.S. 4,329,981) as applied to claims 1-3, 5, 8-9 and 31 above, and further in view of Tsubone et al. (U.S. 4,463,861).

Tsubone et al. teaches the use of a skin with a 2 to 160 micron thickness on a foam laminate in order to provide strength but still allow flexibility (col. 4, lines 50-65). The instant invention claims the use of a skin of 40 to 80 microns in thickness. It would have been obvious to one of ordinary skill in the art to make the skin of Lindholm as modified above in this thickness range in order to provide good strength and flexibility because of the teachings of Tsubone et al.

6. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010

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(Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

7. Claims 1-6, 8-9, 20-22 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-9 of U.S. Patent No. 6,296,919 now reissued as RE 38,422. Although the conflicting claims are not identical, they are not patentably distinct from each other because the instant claims recite a skin thickness that would have been obvious for the article of the patent to have as a result of the method used to make the article claims of the '422 patent as noted above.

8. The obviousness double patenting rejection over Application No. 09/653,785 is withdrawn as being moot because the application is abandoned.

9. Claims 1-6, 8-9, 20-22 and 31 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 7-10 of copending Application No. 09/679,467 now U.S. 6,589,631 B1. Although the conflicting claims are not identical, they are not patentably distinct from each other because it would have been obvious to one of ordinary skill in the art that the third layer of the '467 application provides a thick skin around the foam layer.

10. Claims 1-6, 8-9, 20-22 and 31 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 7 and 10 of copending Application No. 09/672,152. Although the conflicting claims are not identical, they are not patentably distinct from each other because it would have been obvious to one of ordinary skill in the art that the third layer of the '152 application provides a thick skin around the foam layer.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

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11. The obviousness type double patenting rejections over Application No. 09/915,017 are withdrawn in view of applicant's arguments.

12. Applicant's arguments filed 05 January 2004 have been fully considered but they are not persuasive.

Regarding the art rejection applicant argues that Dungal teaches a polyurethane foam that cannot be vulcanized like a rubber. The preferred embodiment of the reference teaches foamed polyurethane, the general teaching of the reference includes rubber. It would have been obvious to one of ordinary skill in the art to have foamed the rubber and other embodiments of the reference in view of the teaching of a foam in the preferred embodiment.

Regarding the double patenting rejection over U.S. 6,296,919, applicant argues that it is moot. The patent has been reissued and the rejection is maintained based on RE 38,422.

Regarding the double patenting rejections over 09/679,467 (now U.S. 6,589,631) and 09/672,152, applicant argues that the claims cover third and second cover layers and not a continuous single layer as now claimed. Figure 26 of both the application



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and the patent show second and third layers that are continuously joined. The claims of the reference and application are broad enough to embrace these embodiments.

13. This application contains claims 10-14 and 23-26 drawn to an invention nonelected with traverse in the paper filed 11 October 2001. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

14. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

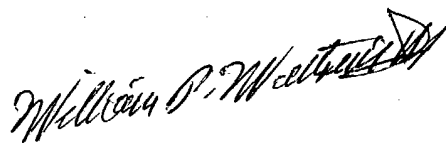
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however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to William P. Watkins III whose telephone number is 571-272-1503. The examiner works an increased flex time schedule, but can normally be reached Monday through Friday, 11:30 A.M. through 8:00 P.M. Eastern Time. The examiner returns all calls within one business day unless an extended absence is noted on his voice mail greeting.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



**WILLIAM P. WATKINS III**  
**PRIMARY EXAMINER**

WW/ww

March 21, 2004